

## **UPDATE ON THE REWRITE OF ARTICLE 7**

- The reauthorized *Individuals with Disabilities Education Act* (IDEA '04) was signed into law by President Bush on December 3, 2004. The law took effect on July 1, 2005.
- Unofficial final regulations interpreting IDEA '04 were released on Friday, August 4, 2006. The regulations were published in the Federal Register on Monday, August 14, 2006, and became official 60 days hence on Friday, October 13, 2006.
- Indiana's special education rules, promulgated at 511 IAC 7-17 thru 7-31 (commonly known as Article 7), must be amended by the Indiana State Board of Education to reflect the changes in IDEA '04.
- Although Article 7 has not yet been amended, on July 1, 2005, local educational agencies (LEAs) began complying with provisions in IDEA '04 that either:
  - (1) Impose a requirement that is absent from Article 7 or
  - (2) Impose a higher requirement than what is currently included in Article 7.When Article 7 imposes a higher requirement than what is required by IDEA '04, local educational agencies must continue to implement the Article 7 requirement until the Article 7 requirement is amended.
- In August of 2005, the Indiana Department of Education's Division of Exceptional Learners (the Division) issued several documents to assist special education directors, schools, parents, advocates, and others in knowing when to implement IDEA '04 requirements or Article 7 requirements. These documents include:
  - (1) IDEA '04/Article 7 side-by-side comparison chart: The left side of the chart highlights new provisions of the IDEA '04 that had to be implemented starting July 1, 2005. The right side of the chart identifies the requirements of Article 7 that must continue to be implemented because Article 7 imposes a higher requirement than what is required by IDEA '04. This document is also available on the Internet at: <http://doe.state.in.us/exceptional/speced/laws.html>.
  - (2) Frequently Asked Questions (FAQ) about Indiana Special Education after IDEA Reauthorization: This document answers a variety of questions about the impact of the requirements of the IDEA '04 and the procedural implications for the implementation of special education in Indiana. Many of the questions included in the document were submitted to the Division from special education directors and others. This document is also available on the Internet at: <http://doe.state.in.us/exceptional/speced/laws.html>.
  - (3) An addendum to the Division's Notice of Procedural Safeguards and Parent Rights in Special Education (NOPS): This addendum substantially changes the sections in the NOPS titled MEDIATION and DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS, and ATTORNEY FEES. A copy of the addendum is available on the Internet at: [http://doe.state.in.us/exceptional/speced/pub\\_ProcedSafeguard.html](http://doe.state.in.us/exceptional/speced/pub_ProcedSafeguard.html). This website address also contains a copy of the NOPS that is addendum inclusive.

- The Division, with recommendations from the State Advisory Council for the Education of Children with Disabilities (the State Advisory Council), will recommend to the State Board of Education changes it believes need to be made to Article 7. As always, any changes to Article 7 will be made through the State of Indiana's administrative rule promulgation process that requires public hearings to be held and comments to be solicited on the proposed changes.
- In January of 2005, the Division began monthly discussions with the State Advisory Council regarding possible changes to Article 7 based on language in the proposed federal regulations interpreting the IDEA. Because final regulations were not yet available, no votes were taken. The council discussed potential changes to the following rules of Article 7:
  1. Rule 18 – General Provisions
  2. Rule 20 – Program Planning and Evaluation
  3. Rule 21 – General Administration of Programs
  4. Rule 22 – Procedural Safeguards
  5. Rule 23 – Confidentiality of Information
  6. Rule 24 – Educational Surrogate Parents
  7. Parts of Rule 27 and Rule 28 Pertaining to Transition to Adult Life
- Five committees were convened by the Division to present recommendations to the State Advisory Council. These committees are:
  1. Transition Committee: This committee formulated recommendations regarding transition to adult life. The committee included Division staff, officials from the Indiana State Improvement Grant (IN-SIG), officials from IN\*SOURCE (Indiana's parent training and information center), ICAN (the Indiana Department of Education's online IEP), university professors, and school personnel throughout the state. . During the State Advisory Council's June 2, 2006 meeting, the Transition Committee recommended that the council exceed IDEA 2004 in two instances: First, the committee recommended that transition planning begin at the case conference committee meeting before the student enters into grade nine or turns 14 years of age, whichever occurs first. Article 7 currently requires transition planning to begin at age 14. IDEA '04 raised the age at which transition planning must begin to 16 years of age. Second, the committee made a recommendation with respect to the "summary of performance" (SOP) requirement. Under this requirement, LEAs must prepare a written plan that provides a student with a summary of the student's academic achievement and functional performance, and includes recommendations on how to assist the student in meeting the student's postsecondary goals. SOP Plans must be prepared for special education students who: (1) graduate with a regular diploma and (2) age out of special education at 22 years of age. The Transition Committee recommended to the council that SOPs also be prepared for students who: (1) leave high school with a certificate of completion and (2) withdraw from high school after obtaining parental/principal consent and going through an exit interview.

2. Rule 26 Committee: The Division established the Rule 26 Committee to evaluate the appropriateness of the assessments and other information required before a case conference committee (IEP Team) can determine eligibility for special education in each of the 13 exceptionality areas. This committee was made up of Division staff, special education directors, university professors, and a psychologist in private practice. Working notes from this committee were shared with Indiana's special education directors on multiple occasions, and the directors provided feedback to the committee. The committee made its final recommendations regarding the text of Rule 26 to Associate Superintendent Bob Marra on October 31, 2006.
  3. Rule 30 Committee: This committee was bifurcated into two task groups: (1) the Parent Task Force and (2) the School Task Force. Both task forces shared their views regarding proposed revisions to Indiana's procedures for complaints, mediation, and due process. The Parent Task Force included Division Staff, an official from IN\*SOURCE, two parent attorneys, and two parents (one who is an Autism specialist). The School Task Force included Division staff, a special education director, attorneys representing schools, and the attorney for the state school board association.
  4. Private School Committee: this committee was convened to gather information on the delivery of services to parentally placed private school students with disabilities. The committee included Division staff, special education directors, and a private school official representing non-secular private schools.
  5. Autism Task Group: This committee prepared proposed language to revise 511 IAC 7-20-3 titled, "Comprehensive System of Personnel development" (CSPD). Language prepared by this committee: (1) deletes the existing language in this section; and (2) replaces the language with requirements pertaining to supports for public agency personnel as specified in 34 CFR §§ 300.119, 300.320(a)(4), and 300.324(a)(3)(ii). Language proposed by the Autism Task Group also replaces the current Rule 26 training requirement for professional and paraprofessional staff serving students who are deaf-blind, students who have a traumatic brain injury, students who are otherwise health impaired, or students who have Autism Spectrum Disorder. There are four reasons for doing this: (1) teacher licensing now includes these four disability areas; (2) Rule 26 is a rule about eligibility for special education as opposed to professional development; (3) student specific training for professionals and paraprofessionals should be part of the student's IEP; and, (4) as stated above, a new section regarding supports for public agency personnel will replace the current CSPD section.
- Beginning in September of 2006, the Division began holding monthly meetings with the State Advisory Council to present proposed changes to Article 7 based on the final IDEA '04 federal regulations. Proposed changes were preliminarily approved by the council.
  - On September 18 thru 20, 2007, 13 informal public meetings were held throughout the state to solicit input regarding proposed changes to Article 7. The Division also created a survey to solicit public input.

- The State Advisory Council utilized input from the informal public meetings and the survey when it voted upon final language that would serve as the council's recommendations to the Indiana State Board of Education. The council completed its work on January 11, 2008.
- Now that the State Advisory Council has completed its work, the Division will work with the State Board of Education to promulgate revised rules for Article 7. The **summer of 2008** is a target date for the completion of this process.
- Below is a checklist of the steps necessary to promulgate administrative rules in the State of Indiana.

### **Checklist for Adoption of Administrative Rules**

**STEP 1:** Need approval from Budget Agency (Executive Order 2-89).

**STEP 2:** Publish "Notice of Intent to Adopt a Rule" at least thirty (30) days before publication of the proposed rule. (IC 4-22-2-25, effective July 1, 1995)

**STEP 3:** Within sixty (60) days after the effective date of the statute authorizing a rule, publish the proposed rule and notice of public hearing.

(a) Submit hearing notice, two (2) copies of proposed rule, and one (1) copy of the matters incorporated by reference to the Legislative Services Agency (LSA) and obtain an LSA document number.

(b) Publish notice of public hearing in Marion County newspaper.

(c) Make at least one (1) copy of the proposed rule, including the full text of any matters incorporated by reference, available for public inspection. (IC 4-22-2-20, IC 4-22-2-21, IC 4-22-2-24)

**STEP 4:** Within fifteen (15) days after publication of the proposed rule, determine the estimated economic impact that compliance with the proposed rule will have on all regulated entities. If the estimated economic impact is more than \$500,000, immediately submit the proposed rule, and all supporting information needed for the LSA to do an analysis, to LSA, Office of Fiscal and Management Analysis. (IC 4-22-2-28)

**STEP 5:** Hold public hearing. (IC 4-22-2-26)

**STEP 6:** Before the 250th day after publication of the notice of intent to adopt a rule, determine whether the proposed rule can be adopted not later than one (1) year after publication of the notice of intent to adopt a rule. (IC 4-22-2-25)

**STEP 7:** If the rule cannot be adopted within one (1) year after publication of the notice of intent to adopt a rule, not later than the 250th day after publication of the notice of intent to adopt a rule send written notice to the chairperson of the administrative rules oversight committee in accordance with IC 4-22-2-25.

**STEP 8:** Adopt final rule, including any revisions. (IC 4-22-2-27 through IC 4-22-2-29)

**STEP 9:** Prepare and submit the following to the Attorney General for approval:

- (a) One (1) original and five (5) copies of the final rule, each with a signature page.
- (b) Three (3) copies of any matters incorporated by reference, if applicable, including a notice briefly describing the incorporated matters.
- (c) Three (3) copies of supporting documentation, separately bound and clearly labeled, that include the following:

- (1) Newspaper proof of publication (publisher's affidavit).
- (2) Transcript or summary of the public hearing.
- (3) Other miscellaneous matters made a part of the rule package, if applicable, such as the following:
  - (A) Transmittal letter.
  - (B) List of all text changes made after publication of the proposed rule in the Indiana Register.
  - (C) List of all matters incorporated by reference that have been previously filed with the Secretary of State, including a citation to the document with which the matter was filed and indicating the date and time the matter was filed.

- (d) Executive summary (required by Governor but may be submitted at this time).

- (e) Budget Agency approval letter (see STEP 1).

The Attorney General, Governor, or Secretary of State may request other documents to be submitted. (IC 4-22-2-31, IC 4-22-2-33, IC 4-22-2-35)

**STEP 10:** Upon the Attorney General's approval, all material must be submitted to the Governor for approval. If after forty-five (45) days the Attorney General has not approved or disapproved the rule, the rule is deemed to be approved and may be submitted to the Governor for approval.

(IC 4-22-2-31, IC 4-22-2-32)

(See IC 4-22-2-40 or IC 4-22-2-41 for special circumstances to recall or withdraw a rule.)

**STEP 11:** Upon the Governor's approval or disapproval, retrieve all material. If the Governor approves the rule, immediately submit to the Secretary of State. If after fifteen (15) days the Governor has not approved or disapproved the rule, the Governor may request an additional fifteen (15) days to approve or disapprove the rule. If the Governor neither approves nor disapproves the rule, the rule is deemed approved and may be submitted to the Secretary of State.

(IC 4-22-2-33, IC 4-22-2-34)

**STEP 12:** Upon acceptance for filing by the Secretary of State, the rule will be signed and dated. Retain one (1) complete signed and dated copy and leave remainder of signed documents for the Secretary of State to distribute. (IC 4-22-2-35, IC 4-22-2-39, IC 4-22-7-5)